IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-02-2007

CORAM

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.Nos.9716 & 3208(Md)of 2006 and
W.P.M.P.Nos.10839 & 10840 of 2006 &
W.P.M.P.Nos.(Md)3474 & 3475 of 2006

Kumar Textiles,
rep. By its Proprietor,
S.Sivakumaran ... Petitioner in W.P.No.9716 of 2006

Nithish Exim,
Rep. By its Proprietor
P.Bridget ... Petitioner in W.P.No.3208 of 2006

Versus

1. The Marine Products Export Development Authority, rep.
By its Chairman,
Ministry of Commerce and Industry,
Government of India,
MPEDA House,
Panampilly Avenue,
Post Box No.4272,
Kochin - 628 036.

2.The Assistant Director,
The Marine Products Exports Development Authority,
Ministry of Commerce and Industry,
Government of India,
No.106-J/37, Millerpuram
Second Street,
Tuticorin - 628 008. ... Respondents in both the writ petitions

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the Office Order Part-I No.10/2004 passed by the first respondent and circulated with the Letter No.3/13/2004/Regn/HO dated 23.07.2004 on the file of the first respondent herein and to quash the same.

For Petitioners :Mr.S.Subbiah
For Respondents :Mr.Abraham Markos for Mr.T.Poornam

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O R D E R

Writ Petition W.P.No.3208 of 2006 has been transferred from Madurai Bench of Madras High Court to this Court.

2. These writ petitions are filed challenging the Office Order passed by the first respondent, the Marine Products Export Development Authority, Ministry of Commerce and Industry, Government of India, Kochin and circulated with the letter dated 23.07.2004.

3. The petitioners are the Merchant Exporters of dried fish, having established their business in 1998 and 2003 respectively and the exports are done to the neighbouring country Srilanka.

4. The second respondent by virtue of the powers under the Marine Products Exports Development Act No.13 of 1972, herein after referred to as the said Act, has issued license to carry on the business. The case of the petitioners is that they are not the manufacturers and are only Merchant Exporters and therefore they do not own any processing plant and for the purpose of processing the dried fish, no such plant is required. The above said act namely Act 13, 1972 was enacted to establish an authority for the development of Marine Products Industry, under the control of Government of India and for matters connected therewith. The authority constituted the said Act has a duty to promote for the development of Marine Products Industry with special reference to exports under the control of the Government of India.

5. According to the petitioners, the function of the authority constituted under the said Act especially under Section 9 (2)(h) is to register the exporters of Marine Products on payment of fees that may be prescribed. According to the petitioners, the other provisions of Section 9 have no application. Therefore, according to the petitioners, it is not the function of the authority constituted under the said Act to maintain the standard of products. The dried fish are made with the unsold or left out fish caught from the sea, and after cleaning and drying in the open air and sun light ranging from 24 hours to 14 days. After the same was dried ready with the standards prescribed by the Export (Quality Control and Inspection) Act No.22 of 1963, the Merchant Exporters would export the dried fish to other countries. Therefore, there was absolutely no necessity for setting up of any machinery or any unit either for processing or doing any other purpose before export of dried fish to Srilanka and the same does not require any mechanised process.

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6. According to the petitioners, the respondents have issued new guidelines by their circular, dated 23.07.2004, for the purpose of issuance of certificate of registration as an

Exporter. According to the said guidelines, the Merchant Exporter would be permitted to take only up to two merchant or manufacturer exporters of dried fish or chilled fish, irrespective of the handling facility and normally any Manufacturer Exporter would not be in a position to provide the surplus facility to Merchant Exporter. Any Exporter cannot also have any handling centre, in a built up factory within 500 meters distance, from the sea shore, since the same is prohibited under the Ecological Laws namely Coastal Regulatory Zones.

7. According to the petitioners, when no mechanised device is employed for the purpose of drying fish, the regulation insisting to have their own handling centre either in arrangement with any Manufacturer Exporter or individually is arbitrary. The petitioners have been making representation and there was infact a meeting held on 05.07.2005.

8. The respondents acted as if they are empowered to impose such condition for the establishment of a separate handling centre, which is not within their power. Therefore according to the petitioners, the demand made by the first respondent to the Merchant Exporters to take any manufacturer Exporter for utilising the services of their handling centre or insisting Merchant Exporter to have their own handling centre is illegal and without any power and hence arbitrary.

9. Even though the petitioners had been issued license to carry on business till 31.03.2006, the first respondent by his letter dated 01.03.2006 has directed the petitioners to develop the facility immediately to become eligible for renewal of certificate of Registration as an Exporter. It is also the case of the petitioner that in Tuticorin there is no certified unit for the purpose of processing dry fish. Therefore, the regulation stated above is contrary and is without jurisdiction. It is also the case of the petitioners that to establish a handling centre, it costs nearly one crore, which is not possible for a Merchant Exporter. It is also the case of the petitioners that insisting of such condition at the time when the renewal of license was due on 31.03.2006, in only a way of undue compulsion by the respondents. It is also the case of the petitioners that except in Srilanka, the dried fish is not exported to any other countries, since the consumption of dried fish through out the world has come down, since the market expanded for the foreign countries is in respect of export of Frozen Foods or Sea Foods. In these circumstances, the writ petition is filed challenging the impugned guidelines issued by the first respondent as arbitrary.

10. The respondents have filed the counter affidavit. According to the respondents, the circular issued by the first respondent is within the jurisdiction and therefore the writ petitions are not maintainable. It is also the case of the respondents that the petitioners have accepted the said

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guidelines at the time when the same was issued and hence they cannot be allowed to challenge the same now. The guidelines were issued as per Section 9(2)(f) of the Marine Products Export Development Act, 1972 and 32(i) of the Marine Products Export Development Act Rules, 1972 and the same has come into force from 01.08.2004.

11. The petitioners were issued with a certificate of registration as an Exporter of dried marine products valid up to 31.07.2005, on condition that the conditions stipulated in the said guidelines are to be followed. The petitioners undertaken to abide by the said conditions, dated 23.07.2004 and it was on that basis only, the certificate was renewed up to 31.03.2006. Since for the past two years, the petitioners have not abide with the said condition, the second respondent has to issue the said letter dated 01.03.2006, directing the petitioners to set up its own facility or to get attached to an approved handling facility.

12. It is the case of the respondents, that though the production of dried fish does not require a processing plant, they are expected to handle or process the dried fish only in an approved facility. According to the respondents, as per Section 9 of the said Act, it is not only dealing with regulating of export of marine products but also improving the marketing of marine products outside India etc., and therefore in respect of increasing the export of marine products outside India, if any regulations are passed, the same is within the jurisdiction of the authority. It is also the case of the respondents that Section 9(2) along with Rule 32(i) specifically empowers the authorities to undertake such other measures directly or indirectly to improve, organize and develop the marine products industry with special reference to exports.

13. The purpose of Exporter is to see that quality of marine products is maintained and conform to the specifications recognised by the Central Government under Section 6 of the Export (Quality Control & Inspection) Act, 1963. According to the respondents, the present guidelines were issued only with a view to regulate the various mal practises among the exporters of Marine Products which has resulted in complaints from various buyers, apart from the imposition of total ban on exports of marine products from the country. It was only keeping the said interest of the country at large, the said guidelines are issued. The guidelines issued by Marine Products Exports Development Authority cannot be questioned under Article 226 of the Constitution of India, since the authority is an expert in the field.

14. It is also the case of the respondents that it is not as if India is exporting dried marine products only to Srilanka, but the export is made even to advanced countries like Hong Kong, China, Singapore, Thailand, Taiwan, Japan, Indonesia, Mauritius and USA. It is the case of the respondents that fish

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that are unsold or left out might decay and such fishes are not fit for human consumption, as per the international standard, since it requires to be cleaned and dried, based on the methods adopted. It is also the case of the respondents that Marine Products Export Development authority does not collect any money from Exporters. The cess levied under Section 14(1) of the said Act is only by the Customs Department and credited to the Consolidated fund of India. According to the respondents, even though there is no machinery involved, facilities for handling fishes under various stages is a must for marketing in the sophisticated markets abroad.

15. It is the specific case of the respondents that the respondents are not at all compelling the Exporters to set up drying centres involving very huge expenditure, but only require hygienic storage and packing facilities, which can be set up without heavy investments. According to the respondents, the impugned guidelines are strictly as per the regulations and for the purpose of regulating the export of marine products and conditions does not contravene any provision of the said Act or Rules.

16. The respondents have filed additional counter affidavit stating that the concept of Merchant Exporters as distinct from manufacturer exporters was introduced in the present guidelines. According to them, even earlier the exporters who were not operating or owning a processing plant were required to take out registration as an exporter just like any other exporter, who owned and operated a processing plant. Therefore in respect of registration there was no distinction between two types at all.

17. In the present guidelines, the differentiation is made between the manufacturer and merchant exporters. According to the respondents, the petitioners in these writ petitions, were registered as Exporters of fish and fishery products. The petitioners are now issued certificates as Merchant Exporters, since they do not own or operate any handling facility for dried fish. It is the further case of the respondents that even though under the said Act and Rules, there is no definition of "handling facility", they have later adopted the provisions of export (Quality Control & Inspection) Act 1963.

18. It is also the case of the respondents that as per the notification issued by the Government of India on 30.12.2002, the Rules called "The Export of Dried Fish (Quality Control and Inspection) Rules 2002 was issued under Section 17 of the Export (Quality Control and Inspection) Act 1963. The said rule prescribes the standard necessary for the premises, where dried fish is to be stored or packed. It is based on the said quality prescribed under the regulations, the approval is granted now.

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19. Mr.S.Subbiah, learned counsel appearing for the petitioners in both these writ petitions, took me to the various provisions of the Marine Products Export Development Authority Act, 1972. According to him, even as per the preamble of the said act, the authorities of the Act is stated to be for the establishment of an authority for the development of the marine products industry. He would also submit that under the said Act, the Marine Products Export Development Authority is established as per Section 4. The functions of the said authority are contemplated under Section 9 with specific reference to various measures to be taken by the authority.

20. According to him, as per Section 9(2)(f), the functions of the authorities is to regulate the export of marine products and as per Clause(g) to improve the marketing of marine products outside India. Under Clause (h), to register exporters of marine products on payment of such fees as may be prescribed. Therefore according to him, it is not the duty of the authorities under the above said Act prescribing quality of goods to be exported and it is only to regulate the export business for which the license is granted.

21. He would also submit that under Section 33 of the Act, Rules can be framed by the Central Government. Section 34 enables the authority to make regulations not inconsistent with the Act. Any regulation which may be passed by the authority has to be approved by the Government of India by the official gazette and the Government has also power to cancel any such regulation by notification in the official gazette.

22. According to the learned counsel for the petitioners, the regulations which are now framed by way of guidelines dated 23.07.2004 by Marine Products Export Development Authority was not effected as per the provisions of Section 34 of the said Act. According to him, the petitioners are the Merchant Exporters, who need not own or operate a processing plant and the petitioners are also covered under Clause 21, which clearly says that in certain regions, the dried fish handling facility and chilled fish handling facility is yet to be streamlined and Tuticorin is one such area.

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23. The petitioners being only a Merchant Exporters are called upon to have tie up with the manufacturing exporter, who is having the facilities. He would also submit that as per Export (Quality Control and Inspection) Act, 1963, in its preamble itself says the object is the quality control. The Export inspection council created under the said Act, which has got the function to enforce the measurement of quality control and inspection has not made any complaint about the quality of the goods exported by the petitioners. In such circumstances, the impugned regulations which in effect contemplates the setting up of mechanised device either by the petitioners being Merchant Exporters or in tie up with manufacturing exporters and

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that affects the fundamental right to carry on trade granted under Article 19(1)(g) of the Constitution of India. It is also his contention that the guidelines which speaks about the mechanised device either by the petitioners themselves or in tie up with the manufacturing exporters does not even provide ways and means for rectifying the quality and therefore powers given to the authority under the said Act is un-guided.

24. That apart, learned counsel for the petitioners would submit that the standard has not been mentioned at all and the terms are vague. According to the learned counsel for the petitioners, the guidelines gives an unguided power on the authority which may be misused. The learned counsel would rely upon various Judgments of the Honourable Apex Court including 1995 (1) SCC 501, 1998 (8) SCC 227, AIR 1998 SC 40, AIR 1985 SC 119, to substantiate his contention that the impugned regulation gives unrestricted discretion with unguided powers. It is violative of the fundamental rights and discriminatory in character. The learned counsel would also submit that there is no nexus between the provisions of the guidelines and objects sought to be achieved, since according to him, the quality of material to be exported cannot be mixed up or confused with the license.

25. According to him the said Act, deals only with license, while the Export (Quality Control and Inspection) Act, 1963, deals with the maintenance of quality and by virtue of powers under the said Act, the authority cannot impose any quality on the Exporters. He would also reiterate that the guidelines is only deemed to be a minute, since the same has not been approved by the Government of India. According to him, at the most, this can be an executive instruction and that cannot have the force of law. Unless and until, rules under the said Act are amended, the guidelines issued are outside the jurisdiction of the authorities as per the said Act.

26. On the other hand, Mr. Abraham Markos, learned counsel appearing for the respondents would submit that as per the said Act, the guidelines are framed in accordance with the powers conferred on the authority under Section 9 of the Act. He would submit that since Section 9 imposes a mandatory duty on the part of the authority under the said Act, the present guidelines are issued as per the said provision. The learned counsel would submit that the impugned guidelines are neither rules nor regulations and they should be deemed to be the orders under Section 9 of the said Act.

27. It is also his contention that the petitioners have applied for issuance of certificate based on the said guidelines issued in July 2004, which came into effect from 01.08.2004. He would also submit that the certificates issued to the petitioners specifically state that the petitioners will abide by the guidelines dated 23.07.2004 of the Marine Products Export Development Authority. Having accepted that condition

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and having fully known about the same when the petitioners have obtained the certificate, it is not now open to them to challenge the guidelines. According to him, as per Para 21 of the guidelines, the period of one year was given for the purpose of approval of their handling facility and it was only based on that the certificate was issued up to 31.03.2006.

28. He would also submit that the very purpose of Section 9 of the said Act is for the purpose of improving the marketing of exporters which necessarily depends upon the standard. Therefore, it cannot be said that the license given under the said Act cannot be attached to the Quality of the materials to be exported. He would also submit that in the meeting held at Tuticorin on 05.07.2005, conducted by the authority, the petitioners especially the petitioners in W.P.No.9716/06 has infact participated. The learned counsel would rely upon various Judgments of the Honourable Apex reported in 1995 (1) SCC 501, 1998 (8) SCC 227 and 2003 (5) SCC 437, to substantiate his contention that the marketability to exportable goods is based on the national policy and therefore the scope of judicial review is very limited.

29. I have heard the learned counsel for the petitioners as also the learned counsel appearing for the respondents and perused the entire records.

30. The short question that is to be considered on the facts and circumstances of the case is as to whether the impugned regulations issued by the first respondent, being the Marine Products Export Development Authority dated 23.07.2004 for issuing certificate of registration as an exporter is well within the powers of the first respondent authority under the said Act. The further question is as to whether such guidelines are opposed to the constitutional and fundamental rights and infringe the right granted on the petitioners under Article 19 of the Constitution of India and what is the scope of such guidelines.

31. Before going into the said aspect, it is relevant to point out that the petitioners have been issued certificate of registration as an Merchant Exporter, by the first respondent authority on 09.12.2004, after the impugned guidelines which came into effect on 01.08.2004. While the petitioner in W.P.No.3208 of 2006 was registered as a manufacturer exporter on 09.12.2004, the petitioner in W.P.No.9716 of 2006 was registered as a Merchant Exporter on 03.02.2005. The condition attached to the said certificate of registration as an Exporter contains in the said certificate itself. Condition No.2 of the certificate states as follows:

> "(2) The holder will abide by the Guidelines dated 23.07.2004 of MPEDA for issue of Certificate of Registration as an Exporter as amended from time to time."

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32. The Certificate also contains another clause No.4 which states as follows:

> "(4) The exporter shall ensure that the quality of the marine products exported by him confirm to the specifications recognised by the Central Government under Section 6 of the Export (Quality Control and Inspection) Act 1963 (21 of 1963) and rules, regulations and instructions thereunder, as amended from time to time."

33. The certificate was issued in favour of the petitioners under the said Act. Now turning to the terms of impugned guidelines, the said guidelines issued as per Rule 40 of the said Act 1972, which contemplates the requirement of the certificate of registration of exporters issued by the authority. The said rule states as follows:

> 40. Registration of Exporters
>
> (1) No person shall, after the expiration of two months from the date of coming into force of this rule, export any marine products unless he has been registered as an exporter with the Authority. The applicant will be allowed to export during the period of one month pending issue of the Certificate of Registration:
>
> Provided that this rule shall not apply to the export of marine products:
>
> (a) by or on behalf of the Central Government or the Authority or any person authorised by the Central Government or the Authority to export marine products;
> (b) by means of gift parcel or sending of samples;
> (c) as personal effects of passengers;
> (d) for any non-commercial purposes; and
> (e) for any exhibition abroad.
>
> (2) In case of items referred to in clauses (b) to (e) of the provision to sub-rule (1), a maximum limit in terms of value shall be fixed by the Authority from time to time, depending on the nature of the product, quantum to be exported, volume of samples to be exhibited/distributed."

34. It is true that under the guidelines, the term Merchant Exporter does not require to possess a processing plant, but authorises to utilise surplus capacity of an existing processing plant or handling facility for dried fish. On the other hand, the manufacturing exporter is the owner of an approved processing plant. Clause 21 of the guidelines which runs as follows:

> "21. Certificate of registration as an exporter under rule 40 granted to exporters of live marine products other than ornamental fish, dried marine products and chilled fish should ideally be endorsed only if the holder owns and operates an MPEDA approved

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live fish handling facility or an MPEDA approved dried fish handling facility or an MPEDA approved chilled fish handling facility, as the case may be. Since, in some of the regions, approval of live fish handling facility, dried fish handling facility and chilled fish handling facility is yet to be streamlined, the certificate of registration as an exporter granted to live fish exporters, dried fish exporters and chilled fish exporters will mention that the validity of the certificate is for 1 year more only, within which period he has to get approval for his handling facility and get that registration number endorsed on the certificate of registration as an exporter. The registration as an exporter granted to these categories of exporters will be cancelled after due notice, etc. if he fails to get his facility approved or if he fails to get himself included as a merchant exporter attached to an approved live marine products (other than ornamental fish) or dried marine product or chilled fish handling facility, unless the 1 year time given is extended further by a separate order. "

35. The basic contention raised by the learned counsel for the petitioners is that the said guidelines are not in the form of regulations or rules framed under the said Act. Since according to him, the authority contemplated under the said Act namely, the first respondent has jurisdiction to make regulation under Section 34(1) of the Act and such regulation will be valid, only if it is approved by the Central Government and therefore his submission is that in as much as the impugned guidelines, which can be only taken as regulations which the first respondent authority can frame has not been framed in accordance with Section 34 of the Act and therefore, the same should be declared opposed to the said Act itself. In this regard, it is relevant to extract Section 34 of the Marine Products Export Development Act which reads as follows:

"34.(1) The Authority may make regulations not inconsistent with this Act and the rules made thereunder, for enabling it to discharge its functions under this Act.

(2) Without prejudice to the generality of the foregoing powers such regulations may provide for all or any of the following matters, namely:-

a) The procedure to be followed at meetings of the Committees appointed by the Authority and the number of members which shall form a quorum at a meeting.

b) the delegation to the Chairman, members, Director, Secretary or other officers of the Authority of any of the powers and duties of the Authority under this Act:

c) the travelling and other allowances of members of the Authority and of Committees thereof;

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d) the pay and allowances and leave and other conditions of service of officers (other than those appointed by the Central Government) and other employees of the Authority;

e) the maintenance of its accounts;

f) the maintenance of the registers and other records of the Authority and its various committees;

g) the appointment by the authority of agents to discharge on its behalf any of its function;

h) the persons by whom, and the manner in which, payments, deposits and investments may be made on behalf of the Authority.

(3) No regulation made by the Authority shall have effect until it has been approved by the Central Government and published in the Official Gazette, and the Central Government, in confirming a regulation, may make any change therein which appears to it to be necessary.

(4) The Central Government may, by notification in the Official Gazette, cancel any regulation which it has confirmed and thereupon the regulation shall cease to have effect.

36. A reference to the said Section shows that the first respondent authority is empowered to make regulations especially in relation to the matters contemplated under Section 34(2), which mainly deals with the administrative aspect of the first respondent authority like delegation of powers, travelling allowances, maintenance of accounts, maintenance of registers etc.

37. On the other hand, the contention of the learned counsel for the respondents is that the impugned guidelines are neither rules to be framed by the Central Government under Section 33(1) of the said Act nor regulations to be framed by the first respondent authority under Section 34(1) of the said Act, but they are the powers derived from Section 9 of the Act itself, since the guidelines is in the form of measures taken by the first respondent authority for promoting the marine products industry with a specific reference to exports.

38. Section 9 of the Marine Products Export Development Act States as follows:

"(1) It shall be the duty of the authority to promote, by such measures as it thinks fit, the development under the control of the Central Government of the marine products industry with special reference to exports.

(2) Without prejudice to the generally of the provisions of sub-section (1), the measures referred to therein may provide for-

(a) developing and regulating off-shore and deep-sea fishing and undertaking measures for the conservation and management of off-shore and deep-sea

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fisheries.

(b) registering fishing vessels, processing plants or storage premises for marine products and conveyances used for the transport of marine products;

(c) fixing of standards and specifications for marine products for purposes of export;

(d) rendering of financial or other assistance to owners of fishing vessels engaged in off-shore and deep-sea fishing and owners of processing plants or storage premises for marine products and conveyances used for the transport of marine products, and acting as an agency for such relief and subsidy schemes as may be entrusted to the Authority.

(e) carrying out inspection of marine products in any fishing vessel, processing plant, storage premises, conveyance or other place where such products are kept or handles, for the purpose of ensuring the quality of such products.

(f) regulating the export of marine products,

(g) improving the marketing of marine products outside India,

(h) registering of exporters of marine products on payment of such fees as may be prescribed,

(i) collecting statistics from persons engaged in the catching of fish or other marine products, owners of processing plants or storage premises for marine products, or conveyances used for the transport of marine products, exporters of such products and such other persons as may be prescribed on any matters relating to the marine products industry and the publishing of statistics so collected, or portions thereof or extracts there from;

(j) training in various aspects of the marine products industry, and

(k) such other matters as may be prescribed.

(3) The Authority shall perform its functions under this section in accordance with and subject to such rules as may be made by the Central Government."

39. A reference to the said section shows that the first respondent authority which is constituted under the said Act, as per Section 4 has the basic function of promoting marine products industry with specific reference to exports and in that regard it is empowered to take certain measures. Section 9(2) of the said Act specifically states some of the measures which the first respondent authority may take. It is relevant to point out that the measures which the first respondent authority is empowered to take include not only regulating exports of marine products but Section 9(2)(c)specifically states that :

"fixing of standards and specifications for marine products for purposes of export;"

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40. Therefore it is clear that the first respondent authority was created for the purpose of promoting marine products industry with specific reference to export and in that regard to issue licenses, has certainly right and jurisdiction to take measures for fixing standards and specifications of marine products for the purpose of export. Therefore the contention raised by the learned counsel for the petitioners, as if the first respondent has no right or jurisdiction to impose quality on products to be exported has no basis whatsoever. I am totally in agreement with the learned counsel for the respondents that the impugned guidelines issued are not the regulations or rules framed as per the Act, but they are the measures taken in accordance with Section 9 of the said Act, which does not require the procedures as contemplated either under Section 33 or 34 of the said Act.

41. It is also relevant at this stage to point out one other provision of the marine products export development authority rules, 1972. Rule 32 while speaking about the additional functions, it states under clause (i) as follows:

> "(i) undertake such other measures which shall directly or indirectly improve, organise and develop the marine products industry with special reference to exports. "

42. Therefore there is absolutely no difficulty to come to the conclusion that the impugned guidelines are in accordance with Section 9 of the Marine Products Export Development Act.

43. That apart, as I have narrated earlier, the condition of licenses which has been given to the petitioners itself contemplate the clause and subject to a condition that the guidelines are to be followed. While so, I do not think that the petitioners could be permitted now to go back and question the validity of the guidelines, which are certainly binding on the petitioners. It is also relevant to point out that it is not even the case of the respondents that the petitioners being the merchant exporter are compelled to install the processing unit. What is contemplated under the guidelines is to have a tie up with the manufacturing exporter, who are expected to have the processing unit for the purpose, however fixing the maximum limit of two for every one of manufacturing exporters. I do not think that such conditions will take away the right of the petitioners to carry on business, since the same can only be taken as a reasonable restriction, since the object as per the said Act and Rules is to see that the quality in export is maintained.

44. The further contention of the learned counsel for the petitioners that the maintenance of quality is for the authority or council constituted under the Export (Quality Control and Inspection Act 1963) is absolutely irrelevant. Even assuming that the council contemplated under the said Act has not taken any action for the purpose of maintaining quality in

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export on the part of the petitioners, it does not mean that the authority under the present Act, who are authorised to issue licenses can close their eyes for the purpose of issuing licenses, especially when they have a duty to take measures in maintaining the standard and quality of the products exported.

45. Therefore I do not see any justification in the contention of the learned counsel for the petitioners that until and unless, the council contemplated in the Export (Quality Control and Inspection) Act, 1963 takes any action, the authority under the present Act, who are authorised to issue license are deprived of any power in insisting for maintenance of quality.

46. A reference to the said Act and Rules, as I have enumerated above shows that it has been the policy of the Government to see that the export business is controlled, but also to maintain quality of the products which are exported to foreign countries, which is certainly a national policy in the healthy economic atmosphere of the country as such.

47. As correctly pointed out by the learned counsel for the respondents, the Honourable Supreme Court in the Judgment rendered in [Union of India and another Vs. International Trading Co., and another](2003)(5)SCC 437 has held that reasonableness of restriction must be determined from the standpoint of general public interest. The Honourable Supreme Court while speaking about the reasonableness of restrict has laid down the law as follows :

> " 23. Reasonableness of restriction is to be determined in an objective manner and from the standpoint of interests of the general public and not from the standpoint of the interests of person upon whom the restrictions have been imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved; the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict. The reasonableness of the legitimate expectation has to be determined with respect to the circumstances relating to the trade or business in question. Canalisation of a particular business in favour of even a specified individual is reasonable where the interests of the country are concerned or where the business affects the economy of the country."

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48. Again, the Honourable Supreme Court in the Judgement rendered in [M.R.F.Ltd., V. Inspector Kerala Government and others] (1998) (8) SCC 227 has laid down the yardstick for the purpose of providing reasonableness of the statutory provision as follows:

> "13. On a conspectus of various decisions of this Court, the following principles are clearly discernible:
>
> (1) While considering the reasonableness of the restrictions, the court has to keep in mind the Directive Principles of State Policy.
>
> (2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.
>
> (3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.
>
> (4) A just balance has to be struck between the restrictions imposed and the social control envisaged by clause (6) of Article 19.
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> (5) Prevailing social values as also social needs which are intended to be satisfied by restrictions have to be borne in mind.
>
> (6) There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise."

49. By applying the said principles laid down by the Honourable Apex Court, I am of the considered view that the impugned guidelines which are the measures taken under Section 9 of the said Act imposing certain conditions to maintain the quality of dried fish to be exported can only be taken as a policy of the Government, apart from the involvement of public interest. That apart, the condition stipulating the handling facility and processing plant either by itself as a merchant exporter or in tie up with manufacturer exporter cannot be said to be an unreasonable restriction, since it is not only reasonable, but it is intended for maintaining the quality and therefore it can never be said that there is no nexus between the object sought to achieved and the guidelines issued.

50. In view of the above said facts and circumstances, I am of the considered view that the impugned guidelines are neither opposed to the Marine Products Export Development Act

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nor imposing unreasonable restriction on the rights of the petitioners to carry on trade.

51. Therefore the writ petitions fail and the same are dismissed. No Costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chairman,
The Marine Products Export
Development Authority,
Ministry of Commerce and Industry,
Government of India,
MPEDA House,Panampilly Avenue,
Post Box No.4272, Kochin - 628 036.

2.The Assistant Director,
The Marine Products Exports
Development Authority,
Ministry of Commerce and Industry,
Government of India,
No.106-J/37, Millerpuram
Second Street,
Tuticorin - 628 008.

+ 1 cc to Mr. S Subbiah, Advocate SR no. 9421

+ 1 cc to Mr. T. Poornam, Advocate SR No. 9377

PV(CO)
SR/19.2.2007

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